

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 362 and 376 of 2011

Friday, this the 13th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBERO.A.No.362/2011

1. Thomas K.C. S/o Chavro TM,
BSNL, Narakkal, Ernakulam.
2. Augustine K.A., S/o Pappu.T.M,
BSNL, Narakkal, Ernakulam.
3. Valsala M.S, W/o Raveendranathan Nair,
SDE (Internal), BSNL, Narakkal, Ernakulam.
4. Aisha K.K., W/o K.M.Khader,
SDE(External), BSNL, Narakkal, Ernakulam.
5. Sainaba Beevi.N.A., W/o T.V.Abdulkahder,
JTO, BSNL, Narakkal, Ernakulam.
6. Dorris Fernandez, S/o Antony Fernandez,
JTO, BSNL, Vypin, Ernakulam.
7. Beena S, W/o Viswanathabn Mallan,
SSOP, BSNL, Narakkal, Ernakulam.
8. Antony K.A., S/o Antony,
TTA, BSNL, Narakkal, Ernakulam.
9. Babu A.K., S/o Karuppan,
TM, BSNL, Narakkal, Ernakulam.
10. Sadanandan, W/o Gopalan,
TM, BSNL, Narakkal, Ernakulam.
11. Balakrishnan, S/o Kunjan Pilla,
TM, BSNL, Narakkal, Ernakulam.
12. David P, S/o Pappachan,
TM, BSNL, Narakkal, Ernakulam.
13. Sarojini P.K., W/o Purushan,
Group D, BSNL, Narakkal, Ernakulam.

14. Sasikala.C.K., W/o Viswanathan,
SSOP, BSNL, Narakkal, Ernakulam.
15. Subhashini V.K., W/o Subhash,
Sr. TOA(P), BSNL, Narakkal, Ernakulam.
16. Antony T.C., S/o Chothi,
SS(O), BSNL, Narakkal, Ernakulam.
17. Alice George, W/o George,
SS(O), BSNL, Narakkal, Ernakulam.
18. Swapna C.S., W/o Sajeevkumar,
Sr TOA(T), BSNL, Narakkal, Ernakulam.
19. Latha.P.P., W/o Radhakrishnan,
Sr. TOA(G), BSNL, Narakkal, Ernakulam.
20. Muraleedharan, S/o Padmanabhan,
TM, BSNL, Narakkal, Ernakulam.
21. Johny.P.J., S/o Joseph,
TB, BSNL, Narakkal, Ernakulam.
22. Johnson.V.A., S/o Aouse,
Motor Driver, BSNL, Narakkal, Ernakulam.
23. Ramesan.O.R., S/o Raveendran,
TM, BSNL, Narakkal, Ernakulam.
24. Juliet P.P., W/o Gorge,
Group D, BSNL, Narakkal, Ernakulam.
25. Madhavan.V.G., S/o Govindan,
TM, BSNL, Narakkal, Ernakulam.
26. Babu.K.G., S/o Ganapathy,
TM, BSNL, Narakkal, Ernakulam.
27. Balachandran.P.C., S/o P Chakrapani,
TM, BSNL, Narakkal, Ernakulam.
28. Ashokan.P.K., S/o Krishnan,
TM, BSNL, Narakkal, Ernakulam.
29. Dinesan, S/o Pezhangan,
TM, BSNL, Narakkal, Ernakulam.
30. Divakaran Nair.P.N., S/o Narayananpilla,
TTA, BSNL, Narakkal, Ernakulam.
31. George M.L, S/o Lonan,
TM, BSNL, Narakkal, Ernakulam.
32. Johny.A.J, S/o A.J.Joseph,
TM, BSNL, Narakkal, Ernakulam.

33. Kesavan.N.B., S/o Bava,
TM, BSNL, Narakkal, Ernakulam.
34. Pradeep Kumar.R., S/o Ramanatha Shenoy,
TM, BSNL, Narakkal, Ernakulam.
35. Radhakrishnan A, S/o Chandrasekhara Menon,
TM, BSNL, Narakkal, Ernakulam.
36. Reghu V.K., S/o Kesavan,
TM, BSNL, Narakkal, Ernakulam.
37. Sasi, S/o Chochal,
TM, BSNL, Narakkal, Ernakulam.
38. Sivaraman.K.R., S/o Ramankutty,
TM, BSNL, Narakkal, Ernakulam.
39. Venugopal.R.K., S/o Krishnan,
TM, BSNL, Narakkal, Ernakulam.
40. Sanajayan.K.G., S/o Gangadharan,
TM, BSNL, Narakkal, Ernakulam.
41. Varghese, S/o Vakko,
TM, BSNL, Narakkal, Ernakulam.
42. Bonaventure Paynter, S/o Mornin Paynter,
TM, BSNL, Vypin, Ernakulam.
43. Rajan.A.N., S/o Narayanan,
TM, BSNL, Vypin, Ernakulam.
44. K.K.Lalan, S/o Kuttapan,
TM, BSNL, Vypin, Ernakulam.Applicant

(By Advocate Mr Saji Isaac K.J.)

v.

1. Bharat Sanchar Niagam Limited,
Janpath, New Delhi-110 001,
rep. By its Chairman and Managing Director.
2. Principal General Manager,
Bharat Sancahr Nigam Limited,
BSNL Bhavan,
Ernakulam-682016.Respondents

(By Advocate Mr Pradeep Krishnan, ACGSC)

O.A.No.376/2011

1. V.K.Parameswaran, S/o V.A.Kunjan,
Senior Telephone Supervisor, Telephone Exchange,

Puthencruz.

2. Shiji Thomas, W/o TY Jose,
Telecom Mechanic, Telephone Exchange,
Ambalamugal.
3. E.K.Subhadra, W/o P.G.Raghavan,
Telecom Technical Assistant,
Telephone Exchange, Thiruvankulam-682 305.
4. V.J.Albert, S/o V.A.Joseph,
Telecom Mechanic, Telephone Exchange,
Puthencruz.
5. A.K.Karthikeyan, S/o A.T.Kumaran,
Telecom Mechanic, Telephone Exchange,
Ambalamugal.
6. M.K.Mahendran, S/o Sarojini,
Telecom Mechanic, Telephone Exchange,
Ambalamugal.
7. P.K.Mathai, S/o Kuriako,
Telecom Mechanic, Telephone Exchange,
Puthencruz.
8. A.K.Shaji, S/o A.P.Kunjappan,
Telecom Mechanic, Telephone Exchange,
Mumbalangi.
9. E.J.Robert, S/o E.V.Joseph,
Telecom Mechanic, Telephone Exchange,
Kumbalangi.
10. T.N.Vinod, S/o T.A.Narayanan,
Telecom Mechanic, Telephone Exchange,
Kumbalangi. Applicants

(By Advocate MrR Sreeraj)

v.

1. Union of India represented by its
Secretary to the Government of India,
Ministry of Communications & IT,
Department of Telecommunications,
20, Asoka Road, Sanchar Bhavan,
New Delhi-110 001.
2. Bharat Sanchar Niagam Limited, represented
by the Chairman and Managing Director,
Corporate Office, Statesman House,
Barakhamba Road, New Delhi-1.
3. The Chief General Manager,
Bharat Sanchar Niagam Limited,

Kerala Circle, Trivandrum.

4. The Principal General Manager,
Bharat Sanchar Nigam Limited,
BSNL Bhavan, Kochi-16.

(By Advocate Mr Millu Dandapani, ACGSC for R.1)

(By Advocate Mr PMM Najeeb Khan for R.2 to 4)

This application having been finally heard on 10.01.2012, the Tribunal on 13.01.2012 delivered the following:

ORDER

HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER

The legal issue involved in the two cases being one and the same, these O.As are disposed of by this common order.

2. The challenge in this case is about the extent of House Rent Allowance (HRA) admissible to the applicants who are employees of the B.S.N.L. and posted at various places in Kerala, which do not come within the ambit of Kochi (U.A). They were no doubt paid higher rates of CCA (20%) on the basis of dependency certificate issued by the DOT & DPE. However, after the acceptance of the recommendations of the 2nd Pay Revision Committee, two office orders were issued by the Corporate Office of the BSNL – one dated 05-03-2009 (Annexure R-1) for the Executives of the B.S.N.L. and the other dated 07-05-2010 (Annexure R-2) for the Non-executives of the B.S.N.L. Para 1 of the said orders reads respectively as under:-

(a) "In pursuance of the Presidential Directives issued by Ministry of Communications & Information Technology, Department of Telecom, vide letter No.61-01/2009-SU dated 27th February 2009 in terms of Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises OM No.2(70)08-DPC (WC) dated 26.11.2008, the undersigned is directed to convey the approval of the competent authority that the revised IDA pay scales in replacement of existing IDA pay scales for the Board level and below Board level Executives of BSNL (absorbed and BSNL recruited), effect from 01.01.2007, will be as under:"

(b) "1.0 In pursuance of Agreement dated 07.05.2010 signed on behalf of the BSNL Management with the representative union of

non-executive employees of BSNL in terms of Department of Public Enterprises OM No.2(7)/2006-DPE(WC)-GL-XIV dated 09.11.2006, the undersigned is directed to convey the approval of the competent authority that the revised IDA pay scales in replacement of existing IDA scales of Non-executive employees of BSNL, effective from 01.01.2007 will be as under:"

In these orders, in so far as House Rent Allowance is concerned, the revised rates based on population in the area concerned, were made effective from 27-02-2009. However, the applicants were continued to be paid the HRA at the earlier pre-revised rates for a substantial period and it was only through Annexure A-12 order dated 04-03-2011 and Annexure A-13 order dated 05-01-2011 that the revised rates of HRA were effected, of course, with retrospective effect from 27-02-2009. In both the orders, provisions relating to House rent allowance are as under:

"5.0 House Rent Allowance:

The house rent allowance to the non-executive employees of BSNL will be at the following rates and will be payable on revised pay w.e.f. 27th February, 2009:

<i>Cities with Population</i>	<i>Rates of HRA</i>
50 lakhs & above	30% of basic pay
5 to 50 lakhs	20 of basic pay
Less than 5 lakhs	10 of basic pay

3. The above provisions of H.R.A, as stated earlier, were not implemented for a substantial period, and the employees were continued to be paid the pre-revised House Rent Allowances. However, by the impugned orders vide Annexure A-12 and A-13 in OA No. 376 of 2011, House Rent Allowance at the revised rates of 10% of the basic pay was made effective from 27-02-2009, in respect of ten places, including Pallikkara. Annexure A-13, however, states that the CGMT The B.S.N.L. Union of Kerala Circle representing the employees of the B.S.N.L. has been writing to the CGMT, BSNL to continue to pay the HRA at the pre revised rates to the employees of the B.S.N.L. in Kerala and also

requested that recovery also be not effected. Annexures A-14 and A-15 of OA 376/2011 refer.

4. These two OAs came to be filed seeking the following reliefs:-

- (i) Call for the records leading to and culminating in Annexure A-2 and to quash the same as the same is arbitrary, illegal, unconstitutional and opposed to the principles of equity and fair play.
- (ii) Direct the respondents to pay HRA @ 20% of the basic pay to the applicants,
- (iii) Direct the respondents to [pay back the HRA which has been deducted from the salary of the applicants to over pay.

5. The contention of the applicants, as could be seen in the OA as well as advanced at the time of arguments is as under:-

- (a) Earlier higher HRA was given to all the applicants.
- (b) The VI Pay Commission recommendations provided for such higher rates of HRA to the counterparts of the applicants employed in various other Central Government Offices.
- (c) Downward revision of HRA cannot be made retrospectively.
- (d) The payment of HRA hitherto fore made, a part of which is sought to be recovered as 'excess amount paid' was in fact as per the entitlement due to the applicants and there is no question of any excess payment. In any event, recovery of excess amount paid to the applicants cannot be effected in view of a catena of judgments notwithstanding the fact that an undertaking was obtained from the applicants relating to recovery of excess payment, at the time of revision of pay scales.
- (e) The Cochin Corporation has identified the areas as Cochin (UA) vide Annexure R 7, wherein the area Thiruvankulam does not figure. However, the employees posted there are being paid higher rates of HRA as hitherto. As such, the applicants should also be paid the higher rates of HRA.

6. The contention, as canvassed both in their reply and at the time of argument of the Respondents, who have resisted the OAs, is as under:-

- (a) There is no question of comparison with other central Government employees or for that matter, referring to the VI CPC as the pay

revision of the employees of B.S.N.L. took place as per the 2nd Pay Revision Committee and not on the basis of VI CPC.

- (b) Uniformly, the revision has taken place as per the Corporate Office decision and as such, the claim of the applicants cannot be accepted.
- (c) The Pay revision and attendant allowances including HRA had been taken in consultation with the Union which represent all the employees of the B.S.N.L. and as such, there is no question of deviating from the decision taken.
- (d) An undertaking had been given by the B.S.N.L. Employees which reads as under:-

"I, hereby, undertake that any excess payment that may be found to have been made as result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the BSNL either by adjustment against future payment due to me or otherwise."

7. The above undertaking, the respondents contend, cannot be stultified and the very purpose of obtaining the above undertaking would be defeated if recovery is not effected.

8. At the time of admission hearing, vide order dated 20-04-2011 in OA No. 362 of 2011, an interim order was passed to the effect that no recovery shall be made on account of the HRA alleged to have been paid inadvertently to the applicants. However, further payment of HRA to the applicant shall be subject to their furnishing of an undertaking that the amount so paid to them shall be refunded, if they are not found entitled. This interim order was challenged before the High Court in Writ Petition No. OP(CAT) 1572 of 2011 (S) and the High Court of Kerala vide judgment dated 03-05-2011, dismissed the OP as having been premature.

9. Arguments were heard and documents perused. The case has to be analyzed as under:-

- (a) What is the extent of HRA admissible to the applicants who are not employed in areas covered under the term "Cochin Urban Agglomeration".
- (b) If the HRA admissible is only 10% as contended by the respondents and not 20% as claimed by the applicants, whether such a reduction in the rate could be made with retrospective effect.
- (c) What is the effect of the Undertaking given by the employees?
- (d) Whether recovery could be effected as contended by the respondents or should the same be waived as claimed by the applicants.

10. The above questions do not include the question whether the comparison of the BSNL employees with reference to the pay and perks with other Central Government employees is permissible. For, answer to the same is an emphatic NO, since as rightly contended by the respondents, the BSNL employees are governed by a different set of rules relating to pay and perks, based on 2nd Pay Revision Committee in contra distinction to the pay and perks of Central Government Employees who are governed by the Revised Pay Rules, 2007 framed in the wake of the acceptance of the VI CPC.

11. As regards para 9(a) above, the decision taken by the Corporate Office on the basis of recommendations or otherwise of the 2nd Pay Revision Committee has to be taken as a policy decision. This decision has been taken in consultation with the Union which represent the employees under B.S.N.L. The decision, arrived at with the consensus of the Union has to be respected in general. All that is to be seen is whether the decision taken to revise the HRA admissible to employees of B.S.N.L. Is uniformly applied to all the individuals in all the Circles. If answer to the above is in affirmative, the decision of the respondents cannot be faulted with in so far as revision of HRA is concerned.

12. Revision of HRA is one matter and date of its implementation is another.

True, the consensus in regard to revision of HRA has been arrived at w.e.f. 27-02-2009. However, by the time the agreement was arrived at on 07-05-2010, by which time, the employees had been paid the HRA at the pre-revised rates. Thereafter too, in so far as Kerala circle is concerned, vide Annexure A-13, approval of the CGMT for payment of HRA at the revised rates was conveyed only by letter dated 05-01-2011. Thus, in so far as the applicants and others similarly placed employees are concerned, these had been paid HRA at the pre-revised rates till February, 2011. Revised rates were effected from the pay bill for the month of March, 2011 and in the said bill, amount recoverable for the earlier excess payment is also specified. The question is, whether the applicants should be subjected to recovery of the excess amount of HRA paid from 27-02-2009 till 28-02-2010.

13. It is to be highlighted here that when the OA No. 362/2011 was considered on 20-04-2011 and stay was granted, a caution was administered that an undertaking should be given by the applicants that in case they are not found entitled to higher rate of HRA, further payment to them as HRA shall be refunded by them. Thus, in so far as any excess payment is concerned, on the basis of the undertaking given, the applicants are liable to refund the excess payment.

14. The question thus reduces to the extent whether the excess payment made to the applicants from March, 2009 to February, 2011 should be recovered or not. This period has to be bifurcated into two – (a) from March, 2009 to 07-05-2010 and from 07-05-2010 to February, 2011. Period at (a) above is anterior to arriving at an agreement between the Management and the Union, while period at (b) is posterior to the agreement. In respect of the latter, the Union is well aware that the HRA is reduced to 10%. Thus, recovery for the

excess payment made from May 2010 to February, 2011 cannot be avoided. In this regard, the decision of the Apex Court in the case of Registrar, Cooperative Societies Haryana vs Israil Khan (2010) 1 SCC 440 wherein, the Apex Court has held as under:-

"10. In these cases, the Rules specifically provided that the employees should be paid a consolidated salary. Therefore without amendment of the Rules, the Managing Committees could not have passed a resolution for giving the benefit of regular pay scales that too with retrospective effect to the employees. Further, the Societies did not have the funds to make such payments and illegally diverted the funds made available for disbursal of loans to farmers, for the purpose of making such excess payment to the employees. When the resolution extending such benefit was passed and the amounts earmarked for loans for farmers were diverted for making payment to the employees, the Managing Committees as well as the employees were aware that the resolution and consequential payment was contrary to the Rules. There was no question of any wrong calculation or erroneous understanding of the legal position. Most of the employees who received similar relief have refunded or have agreed to refund the excess payment. Making any exception in the case of the respondents would also lead to discrimination."

15. In so far as excess payment made prior to the agreement arrived at, it is to be seen whether the recovery has to be effected. Counsel for the respondents relied upon the decision of the Apex Court in Union of India vs Sujatha Vedachalam (2000) 9 SCC 187 and stated that according to that judgment, recovery can be made, but in installments. In fact, the said case was referred to in the case of Col. B.J. Akkara (Retd) vs Government of India (2006) 11 SCC 709, where the Apex Court has held as under:-

"No doubt in Union of India v. Sujatha Vedachalam (2000) 9 SCC 187 this Court did not bar the recovery of excess pay, but directed recovery in easy instalments. The said decision does not lay down a principle that relief from recovery should not be granted in regard to emoluments wrongly paid in excess, or that only relief in such cases is grant of instalments. A direction to recover the excess payment in instalments or a direction not to recover excess payment, is made as a consequential direction, after the main issue relating to the validity of the order refixing or reducing

the pay/allowance/pension is decided. In some cases, the petitioners may merely seek quashing of the order refixing the pay and may not seek any consequential relief. In some cases, the petitioners may make a supplementary prayer seeking instalments in regard to refund of the excess payment if the validity of the order refixing the pay is upheld. In some other cases, the petitioners may pray that such excess payments should not be recovered. The grant of consequential relief would, therefore, depend upon the consequential prayer made. If the consequential prayer was not for waiving the excess payment but only for instalments, the court would obviously consider only the prayer for instalments. If any decision which upholds the refixation of pay/pension does not contain any consequential direction not to recover the excess payment already made or contains a consequential direction to recover the excess payment in instalments, it is not thereby laying down any proposition of law but is merely issuing consequential direction in exercise of judicial discretion, depending upon the prayer for consequential relief or absence of prayer for consequential relief as the case may be, and the facts and circumstances of the case. Many a time the prayer for instalments or waiver of recovery of excess is made not in the pleadings but during arguments, or when the order is dictated upholding the order revising or refixing the pay/pension. Therefore, the decision in Sujatha Vedachalam will not come in the way of relief being granted to the pensioners in regard to the recovery of excess payments."

16. As there was no agreement till 07-05-2010, recovery of the excess payment made has to be waived on the principle laid down in the case of Sahib Ram vs State of Haryana 1995 Supp (1) SCC 18 wherein, the Apex Court has held as under:-

The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

17. The above decision was reaffirmed in the case of Purshottam Lal Das vs State of Bihar (2006) 11 SCC 492 in the following terms:-

"10. The High Court also relied on the unreported decision of the learned Single Judge in Saheed Kumar Banerjee v. Bihar SEB. We do record our concurrence with the observations of this Court in Sahib

Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time."

18. In this regard, the following decisions of the Apex Court also go in support of the case of the applicants (in so far as recovery of excess amount paid upto 07-05-2010):-

(a) *State of Bihar v. Pandey Jagdishwar Prasad, (2009) 3 SCC 117,*

wherein, the Apex Court has held as under:-

"21. In *Sahib Ram v. State of Haryana* this Court has held that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee.

xxx

24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent."

(b) *Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, employee.*

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of*

India Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

19. In view of the above, the OAs are partially allowed. It is declared that the applicants are not entitled to the higher rates of House Rent Allowance in view of the agreement reached between the Management and the Union vide order dated 07-05-2010. In so far as excess payment is concerned, recovery shall not be effected for the period upto 06-05-2010. Amount paid in excess towards HRA for the period from 07-05-2010 shall be recovered and the same shall be in easy installments (preferably between 24 to 30 installments).

20. Under the circumstances, there shall be no orders as to cost.

K NOORJEHAN
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN
JUDICIAL MEMBER